

Procurement Guidance Handbook

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How to Use This Handbook

This handbook provides guidance to awardees of grants administered by the Texas Education Agency (TEA) on the following:

- How to properly expend grant funds on goods and services (procurement)
- Contents of documented local policy concerning procurements

Rules of Procurement for Independent School Districts

The rules governing procurement procedures for independent school districts (ISDs) and education service centers (ESCs) are more complex than the rules that open-enrollment charter schools and nonprofit organizations (NPOs) must follow.

The Rules for ISDs and ESCs section of this handbook includes citations of the specific rule applicable to procurement expenditures, depending on whether the funds come from state or federal sources and their amount.

The Rules for Charter Schools and NPOs section describes the federal regulations that govern procurement expenditures.

Differences between Subrecipient and Contractor

Subrecipients and contracts differ in several ways.

A subrecipient does the following:

- Uses funds to carry out a program
- Conducts program services and activities for the beneficiaries of the program.
- Has its performance measured against the objectives of the program.
- Has responsibility for programmatic decision making.
- Must adhere to applicable program compliance requirements.

A contractor, on the other hand, is characterized as follows:

- Has its performance measured against the deliverables identified in the scope of work
- Operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the federal program
- Is not subject to compliance requirements of the federal program

Documented Local Policy

In accordance with EDGAR 200.318(a), all grantees are required to develop their own documented procurement procedures to reflect applicable laws and regulations. FASRG Module 5, 3.5, describes the structure and content of the grantee's written manual for purchasing policies and procedures.

Local policy is applicable to all expenditures, regardless of amount or whether the grant funds being expended come from state or federal sources. Documented local policy is critically important to proper procurement practices. Without a documented local policy governing procurement procedures, a grantee cannot meet audit or monitoring requirements.

The Elements of Local Policy section of this handbook describes the content that should, at a minimum, be included in the grantee's documented local policy.

Procurement Rules

The rules governing procurement by TEA grantees using grant funds are found at the agency, state, and federal level:

1. Texas Administrative Code (TAC; codification of State Board of Education and commissioner's rules): TEA's purchasing and procurement process is addressed in the agency's [Financial Accountability System Resource Guide](#) (FASRG).
2. Texas Education Code (TEC; laws and rules passed by the Texas State Legislature): [TEC §44.031](#) governs purchases by independent school districts (ISDs) of \$50,000 or more.
3. Education Department General Administrative Regulations (EDGAR): Title 2 of the Code of Federal Regulations, Part 200, ([2 CFR 200](#)) 200.318–326, outlines federal procurement standards.

These rules and regulations overlap. When more than one rule is applicable to a procurement or subcontract, the rule that is more restrictive must be followed.

Rules for ISDs and ESCs

For ISDs and ESCs, three factors determine the rules that govern any specific instance of procurement:

- Type of expenditure (using state or federal grant funds, or both)
- Amount of expenditure
- Restrictiveness of applicable rules (when state and federal rules differ, the more restrictive applies)

This section provides a citation of the rules governing your procurement expenditures, organized by expenditure amount and type.

The procurement procedures documented in your local policy should incorporate and be based on the rules specified below. In every case, regardless of the type or amount of expenditure, you must follow the procurement procedures documented in your local policy.

Refer to the Elements of Local Policy section for guidance on documenting your local policy.

Total Aggregate Expenditure Is Under \$50K

The applicable rule depends on the amount of federal funds included in the aggregate expenditure.

Expenditure Type	Applicable Rule
No federal funds	FASRG applies. Refer to Module 5: Purchasing, Sections 3.1-3.10.
Federal funds consist of less than \$10,000 of the \$50,000 aggregate	EDGAR applies. Refer to EDGAR 200.320(a)(1), Procurement by micro-purchases.
Federal funds consist of \$10,000 or more of the \$50,000 aggregate	EDGAR applies.

Expenditure Type	Applicable Rule
	Refer to EDGAR 200.320(a)(2), Procurement by small purchase procedures.

Total Aggregate Expenditure Is \$50K or More

The applicable rule depends on the amount of federal funds expended.

Aggregate of Federal Funds	Applicable Rule
The aggregate of federal funds equals less than \$250,000.	For ISDs, state purchasing guidelines apply. Refer to TEC §44.031. For ESCs, EDGAR applies. Refer to EDGAR 200.320(a)(2), Procurement by small purchase procedures.
In aggregate, federal funds being expended equal \$250,000 or more.	EDGAR applies. The expenditure must be made by sealed bid, and a cost and price analysis must be performed. Refer to 200.320(c), 200.320(d), and 200.323.

Rules for Charter Schools and NPOs

The commissioner of education has the discretion to make the [Financial Accountability System Resource Guide](#) (FASRG) applicable to an individual charter school, as part of the process of approving that school's charter. In those individual cases, FASRG Module 5: Purchasing governs procurement expenditures.

In general, the FASRG does not apply to charter schools, and it is never applicable to NPOs. Because state law ([TEC §44.031](#)) applies only to ISDs, all procurement expenditures are governed by EDGAR, [2 CFR 200.318–326](#).

The procurement procedures documented in your local policy should incorporate and be based on the applicable section of EDGAR. In every case, regardless of the type or amount of expenditure, you must follow the procurement procedures documented in your local policy. Refer to the Elements of Local Policy section for guidance on documenting your local policy.

Elements of Local Policy

In accordance with EDGAR 200.318(a) all grantees are required to document their local policy governing procurement. This local policy is required to incorporate applicable regulations, whether state or federal, into comprehensive procedures designed to support the grantee's individual situation and needs.

Some elements of local policy are required by regulation. In other cases, regulations raise issues that local policy must address in order to meet documentation requirements.

The following sections list the topics to be addressed in local policy, along with any elements that are required to be included in policy as well as issues that local policy must address.

Ethics

Procedures for expending grant funds must always include safeguards against the use of those funds for personal enrichment or gain. Local policy should include guidance on avoiding conflict of interest and on maintaining propriety in relationships with vendors.

Conflict of Interest

According to EDGAR 200.318(c)(1), conflicts of interest arise “when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.”

Required in Policy: All Grantees

All grantees must maintain written standards of conduct defining conflicts of interest and governing the actions of their employees engaged in the selection, award and administration of contracts. At a minimum, those standards must include the following, from EDGAR 200.318(c)(1) except where noted:

- Prohibition restricting any staff with a real or apparent conflict of interest from participating in the selection, award, or administration of a contract
- Prohibition against any staff participating in the selection, award, or administration of a contract from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or parties to subcontracts
- Requirement that board members with business interests abstain from voting on awards of contracts to those businesses and that those interests be disclosed through an affidavit (FASRG Module 5, 3.2.2)
- Description of disciplinary actions for staff found to be in violation of these standards of conduct

Also Required in Policy: Nonprofits and Charters

If your NPO or charter school has a parent, affiliate, or subsidiary organization, your standard of conduct must also address organizational conflicts of interest.

As defined in EDGAR 200.318(c)(2), “Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.”

Issues to Address

Your written policy should also address the following issues:

- How do you define the interests, financial and “other,” that can lead to conflict?
- What constitutes an “apparent” conflict of interest?
- How do you identify staff with a conflict of interest?
- How do you solicit and maintain conflict of interest affidavits from your board?
- How do you eliminate opportunities for conflict for those staff?
- When applicable, how do you define and address organizational conflicts of interest?

Ethical Vendor Relationships

To maintain an ethical business relationship with your vendors, it is critical to avoid the perception that you will accept gifts in exchange for awarding contracts or business.

EDGAR 200.318(c)(1) specifies that “The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.”

EDGAR allows for vendor gifts to be accepted in two situations:

1. When the financial interest (that is, the value of a solicitation) is not substantial.
2. When the gift itself is of low monetary value and is not solicited.

Required in Policy

Your local policy must state that your staff is restricted from soliciting or accepting any items of value from contractors or subcontractors.

Issues to Address

If your local policy makes an allowance for certain gifts from vendors, those gifts and the circumstances under which you accept them must be clearly defined.

Vendor Award Criteria

EDGAR 200.318(h) requires that contracts be awarded only to responsible contractors with the ability to perform successfully under the terms and conditions of a proposed procurement.

Required in Policy

Your local policy must define the methods you use to determine the following about a contractor prior to making an award, per EDGAR 200.318(h) and 200.213:

- Reputation for responsibility and integrity
- Ability to meet the terms and conditions of the procurement
- Compliance with public policy
- Record of past performance
- Financial and technical resources
- Restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities

Also Required in Policy: ISDs

ISDs must ensure their local policy describes how they determine the following in relation to a proposed procurement, per TEC §44.031(b):

- The reputation of the vendor and of the vendor’s goods or services
- The quality of the vendor’s goods or services
- The vendor’s past relationship with the ISD

Oversight and Quality Control

EDGAR 200.318(b) requires the grantee to oversee contractors and vendors to ensure they “perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.”

Required in Policy

Your local policy must describe the methods you employ to oversee your contractors and vendors.

Issues to Address

FASRG Module 5, 3.6.2 suggests the following areas for inclusion in purchasing office responsibilities:

- Ensuring funds are available for a formal solicitation
- Ensuring the use of contracted vendors
- Ensuring legal compliance with bid, proposal, and quotation requirements
- Reviewing and testing products to ensure purchases meet specifications
- Analyzing quality of product and services
- Analyzing product reliability
- Reviewing vendor compliance with price-related terms of contract
- Analyzing vendor’s delivery for timeliness and accuracy
- Analyzing service availability
- Reviewing orders for completeness and accuracy
- Reviewing vendor’s responsiveness to problems
- Reviewing products or services for quality

Purchasing Controls

FASRG Module 5, 3.6.1 describes the control environment required for the proper expenditure of public funds.

Issues to Address

In accordance with FASRG Module 5, 3.6.1, local policy should describe how the following are achieved in the grantee’s procurement procedures:

- Supervision of purchases
- Approval of requisitions
- Approval of purchase orders
- Segregation of duties
- Maintenance of files and records (also required by EDGAR 200.318(i))
- Control over incoming merchandise
- Verification of invoices with purchase order and receiving reports
- Verification of delivery
- Internal review of purchasing process
- Vendor relations, including identification and avoidance of conflicts of interest and other impressions of impropriety

Efficiency

EDGAR 200.318(d) requires all grantees to avoid purchasing unnecessary or duplicative items.

Required in Policy

Your local policy must describe the method you use to determine that a purchase is necessary.

Issues to Address

- How do you determine when to consolidate or break out a procurement to achieve greater economy?
- When is it appropriate to perform an analysis to determine the most economical approach to a procurement, such as lease versus purchase?
- How do you define “aggregate costs”? All purchases must be considered in the aggregate over the entire period of applicable federal grant period approved by TEA.

Surplus Property

EDGAR 200.318(f) requires grantees to use excess or surplus federal property when feasible, and when the use of that property reduces project costs.

Required in Policy

Your local policy must describe procedures for determining whether surplus property exists that may be of use in a planned project. In addition, the procedure must describe how to determine whether the use of that surplus property will reduce the project cost.

Construction Projects

EDGAR 200.318(g) addresses economy and efficiency of construction projects and encourages grantees to employ the “value engineering” approach to contract analysis to ensure that the essential function of each contract item or task is provided at the overall lower cost.

Issues to Address

- How does your local policy ensure that construction projects take advantage of opportunities for cost reduction, when available?

Time and Materials

Time and materials is a type of contract in which costs are the sum of materials cost plus fixed hourly rate. EDGAR 200.318(j)(1) restricts the use of time and materials contracts to procurements in which the grantee has determined no other contract type is suitable.

Required in Policy

Your local policy must define the circumstances in which time and materials contracts may be used. It must specify that all time and materials contracts set a ceiling price, beyond which the contractor is responsible for all costs. In addition, it must specify the oversight procedures you employ to ensure the contractor's methods and controls are efficient and effective.

Dispute Resolution

EDGAR 200.318(k) makes grantees responsible for the “settlement of all contractual and administrative issues arising out of procurements.”

Required in Policy

Your local policy must acknowledge its responsibility for settling procurement issues including source evaluation, protests, disputes, and claims, as well as any other disputes that may arise. In addition, your local policy must state that TEA is responsible for judging only those contract matters that are primarily of federal concern. Your local policy must also state that violations of law will be referred, as appropriate, to the legal authority with jurisdiction.

Cooperative Purchasing

According to EDGAR 200.318(e), grantees are encouraged to employ cooperative purchasing procedures when possible to achieve greater economy or efficiency when procuring common or shared goods or services.

Issues to Address

- How are common or shared goods or services identified?
- Is the purchasing cooperative compliant with state and federal procurement standard depending upon the method of procurement used?

Micro-purchases

According to EDGAR 200.320(a), procurement by micro-purchase “is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed” the grantee’s micro-purchase threshold.

Micro-purchases may be made without soliciting bids. EDGAR 200.320(a) recommends that grantees “distribute micro-purchases equitably among qualified suppliers.”

2 CFR §200.320 officially sets the micro-purchase threshold at \$10,000 in the aggregate across all federal grant programs for the fiscal year. It also allows the LEA to self-certify a higher micro-purchase threshold of up to \$50,000 if the LEA meets either of the following criteria:

- Is a low-risk auditee for their most recent federal audit
- Conducts an annual internal risk assessment to identify, mitigate, and manage financial risk

Due to state Financial Accountability System Resource Guide (FASRG) rules, the LEA may only self-certify a threshold up to \$49,999. The LEA must determine the local threshold based on internal controls, risk, and documented procedures.

The newest revision to the UGG also adds micro-purchases as allowable noncompetitive procurements.

If the LEA chooses to self-certify a higher micro-purchase threshold, the LEA must take the following actions.

1. Develop a written policy justifying and clearly identifying the new threshold.
2. For a threshold from \$10,001 to \$25,000, the LEA must notify TEA at <https://app.smartsheet.com/b/form/e2f879cc182e47a69a39afec56084aa5>.
3. For a threshold from \$25,001 to \$49,999, the LEA must do all three of the following:
 - Notify TEA of the threshold at the link above.
 - Attach the LEA's written policy.
 - Attach either 1) verification of risk level of most recent federal audit; or 2) internal risk assessment and internal controls for mitigating and managing financial risks.

Required in Policy

If you increase your threshold for micro-purchases over \$10,000 (up to \$49,999), based on 200.320(a)(iv), your policy must describe the procedure for self-certifying the increased threshold.

Issues to Address

- What method is used to determine when and how to distribute purchases equitably among suppliers?
- Justify the decisions for a self-certification.
- Define the new threshold.

Small Purchases

EDGAR 200.320(b) defines small purchases as “those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold.” When using the small purchase procurement method, “price or rate quotations must be obtained from an adequate number of qualified sources.” TEA recommends that you gather at least three price quotations when using the small purchase method.

Simplified Acquisition Threshold and Competitive Procurement Limit

The simplified acquisition threshold is \$250,000. However, [Texas Education Code \(TEC\) 44.031](#) requires competitive procurement methods be used for purchases valued at \$50,000 or more. Since TEC 44.031 is more restrictive than EDGAR, the TEC rule applies. **The simplified acquisition threshold under EDGAR does not apply to purchases made with federal funds costing \$50,000 or more.**

Small purchases should be considered as an aggregate amount within the grant period of the applicable grant.

Required in Policy

Your local policy must define a procedure for gathering price quotations when the small purchase acquisition method is used.

Sealed Bids

According to EDGAR 200.320(c), the sealed bid procurement process should be used for procurements in which cost is the only consideration and two or more responsible bidders are available to compete for the business.

Bids are publicly solicited from an adequate number of suppliers. The contract is awarded to the bidder whose proposal meets all requirements of the solicitation for the lowest price.

Required in Policy

Your local policy must define the following:

- The required elements of an invitation to bid, to specifically include the following:
 - A complete, adequate, and realistic specification or purchase description, including a definition of items or services being procured
 - Time and place for opening of bids
- How the specification or purchase description is made public
- Definition of “sufficient response time” between publication of bidding invitation and opening of bids
- Means of determining that all factors are included in determining lowest bid, including factors such as discounts, transportation cost, and life cycle costs
- The sound reasons for disqualification of a bid
- The means of documenting reasons for disqualifying a bidder

Noncompetitive Proposals

According to EDGAR 200.320(f), goods and services may be solicited from a single source under any of the following conditions:

- The item is available only from a single source
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request to TEA
- After solicitation of a number of sources, competition is determined inadequate

Required in Policy

Your local policy must document how you determine the following:

- Availability of an item or service from only one source
- Public exigency or emergency
- Reason for requesting TEA authorization, as well as procedures for maintaining that authorization for monitors and auditors
- Elements that constitute an inadequate competition

Competitive Proposals

According to EDGAR 200.320(d), competitive solicitations are to be used for procurements in which cost is only one of multiple considerations

Proposals are publicly solicited from an adequate number of qualified sources. Contracts “must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.”

Full and Open Competitions

EDGAR 200.320(d)(1) requires requests for proposals to “be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.”

Required in Policy

Your local policy must define the following:

- Required elements of a request for proposal, including description of goods or services being procured and timeline for the procurement
- The elements on which bids are reviewed and judged (that is, the evaluation factors), along with any point or point ranges associated with each element
- How requests for proposal are publicized
- Definition of “maximum extent practical” for consideration of all responses to solicitation

Fair Evaluation of Bids

EDGAR 200.320(d)(2) and (3) required you to “have a written method for conducting technical evaluations of the proposals received and for selecting recipients.”

In awarding contracts, you must select “the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.”

Required in Policy

Your local policy must detail the method you use to conduct your technical evaluation, review, and scoring of proposals received. You must also describe your methods for selecting award recipients.

Historically Underutilized Businesses

According to EDGAR 200.321(a), when possible, you must “take all necessary affirmative steps to assure that you use minority businesses, women’s business enterprises, and labor surplus area firms(historically underutilized businesses, or HUBs).” EDGAR defines those affirmative steps as follows:

- Placing qualified HUBs on solicitation lists
- Assuring that HUBs are solicited whenever they are potential sources
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum HUB participation
- Establishing delivery schedules, where the requirement permits, which encourage HUB participation
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
- Requiring a prime contractor, if subcontracts are to be let, to take the affirmative steps listed above

Required in Policy

Your local policy must include the following:

- Method for creating, maintaining, and referencing a current solicitation list of qualified small and minority
- Method for identifying and soliciting HUBs that are potential sources for a given solicitation
- Definition of “economic feasibility” for dividing the total requirements of a solicitation
- Method for determining when requirements may permit HUB-friendly delivery schedule
- External HUB resources, and procedures for consulting them

Cost and Price Analysis

For every procurement over \$250,000 (the simplified acquisition threshold), EDGAR requires you to perform a cost or price analysis. Before you solicit bids, you must independently estimate the cost of your project. In determining costs, you may **not** use the cost plus a percentage of cost and percentage of construction cost methods of contracting.

All costs subject to this analysis must be allowable under the grant program. The contractor’s profit must be negotiated as a separate element of the total price.

Required in Policy

Your local policy must include the following:

- Description of how the method and degree of analysis are determined for a given solicitation
- How the following elements are considered in negotiating the price element:
 - Complexity of the work to be performed
 - Risk borne by the contractor
 - Amount of subcontracting
 - Quality of its record of past performance
 - Industry profit rates in the surrounding geographical area for similar work

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